

§ 1111.8 Procedural schedule in stand-alone cost cases.

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedule will apply in stand-alone cost cases:

- Day 0—Complaint filed, discovery period begins.
- Day 7 or before—Conference of the parties convened pursuant to § 1111.10(b).
- Day 20—Defendant's answer to complaint due.
- Day 75—Discovery completed.
- Day 120—Complainant files opening evidence on absence of intermodal and intramodal competition, variable cost, and stand-alone cost issues. Defendant files opening evidence on existence of product and geographic competition, and revenue-variable cost percentage generated by complainant's traffic.
- Day 180—Complainant and defendant file reply evidence to opponent's opening evidence.
- Day 210—Complainant and defendant file rebuttal evidence to opponent's reply evidence.

(b) *Conferences with parties.* (1) The Board will convene a technical conference of the parties with Board staff prior to the filing of any evidence in a stand-alone cost rate case, for the purpose of reaching agreement on the operating characteristics that are used in the variable cost calculations for the movements at issue. The parties should jointly propose a schedule for this technical conference.

(2) In addition, the Board may convene a conference of the parties with Board staff, after discovery requests are served but before any motions to compel may be filed, to discuss discovery matters in stand-alone cost rate cases. The parties should jointly propose a schedule for this discovery conference.

[61 FR 52711, Oct. 8, 1996; 61 FR 53996, Oct. 16, 1996, as amended at 63 FR 2639, Jan. 16, 1998; 68 FR 17313, Apr. 9, 2003]

§ 1111.9 Procedural schedule in cases using simplified standards.

(a) *Procedural schedule.* Absent a specific order by the Board, the following general procedural schedules will apply in cases using the simplified standards:

- (1) In cases relying upon the Simplified-SAC methodology:
Day 0—Complaint filed (including complainant's disclosure).

- Day 10—Mediation begins.
- Day 20—Defendant's answer to complaint (including defendant's initial disclosure).
- Day 30—Mediation ends; discovery begins.
- Day 140—Defendant's second disclosure.
- Day 150—Discovery closes.
- Day 220—Opening evidence.
- Day 280—Reply evidence.
- Day 310—Rebuttal evidence
- Day 320—Technical conference (market dominance and merits).
- Day 330—Final briefs.

(2) In cases relying upon the Three-Benchmark method:

- Day 0—Complaint filed (including complainant's disclosure).
- Day 10—Mediation begins. (STB production of unmasked Waybill Sample.)
- Day 20—Defendant's answer to complaint (including defendant's initial disclosure).
- Day 30—Mediation ends; discovery begins.
- Day 60—Discovery closes.
- Day 90—Complainant's opening (initial tender of comparison group and opening evidence on market dominance). Defendant's opening (initial tender of comparison group).
- Day 95—Technical conference on comparison group.
- Day 120—Parties' final tenders on comparison group. Defendant's reply on market dominance.
- Day 150—Parties' replies to final tenders. Complainant's rebuttal on market dominance.

(b) *Defendant's second disclosure.* In cases using the Simplified-SAC methodology, the defendant must make the following disclosures to the complainant by Day 170 of the procedural schedule.

- (1) Identification of all traffic that moved over the routes replicated by the SARR in the Test Year.
- (2) Information about those movements, in electronic format, aggregated by origin-destination pair and shipper, showing the origin, destination, volume, and total revenues from each movement.
- (3) Total operating and equipment cost calculations for each of those

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movements, provided in electronic format.

(4) Revenue allocation for the on-SARR portion of each cross-over movement in the traffic group provided in electronic format.

(5) Total trackage rights payments paid or received during the Test Year associated with the route replicated by the SARR.

(6) All workpapers and documentation necessary to support the calculations.

(c) *Conferences with parties.* The Board may convene a conference of the parties with Board staff to facilitate voluntary resolution of discovery disputes and to address technical issues that may arise.

(d) *Complaint filed with a petition to revoke a class exemption.* If a complaint is filed simultaneously with a petition to revoke a class exemption, the Board will take no action on the complaint and the procedural schedule will be held in abeyance automatically until the petition to revoke is adjudicated.

[72 FR 51376, Sept. 7, 2007]

§ 1111.10 Meeting to discuss procedural matters.

(a) *Generally.* In all complaint proceedings, other than those challenging the reasonableness of a rail rate based on stand-alone cost or the simplified standards, the parties shall meet, or discuss by telephone, discovery and procedural matters within 12 days after an answer to a complaint is filed. Within 19 days after an answer to a complaint is filed, the parties, either jointly or separately, shall file a report with the Board setting forth a proposed procedural schedule to govern future activities and deadlines in the case.

(b) *Stand-alone cost or simplified standards complaints.* In complaints challenging the reasonableness of a rail rate based on stand-alone cost or the simplified standards, the parties shall meet, or discuss by telephone, discovery and procedural matters within 7 days after the mediation period ends. The parties should inform the Board as soon as possible thereafter whether there are unresolved disputes that re-

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quire Board intervention and, if so, the nature of such disputes.

[72 FR 51376, Sept. 7, 2007]

PART 1112—MODIFIED PROCEDURES

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AUTHORITY: 5 U.S.C. 559; 49 U.S.C. 721.

SOURCE: 47 FR 49558, Nov. 1, 1982, unless otherwise noted.

§ 1112.1 When modified procedure is used.

The Board may decide that a proceeding be heard under modified procedure when it appears that substantially all material issues of fact can be resolved through submission of written statements, and efficient disposition of the proceeding can be accomplished without oral testimony. Modified procedure may be ordered on the Board's initiative, or upon approval of a request by any party.

[47 FR 49558, Nov. 1, 1982, as amended at 61 FR 52712, Oct. 8, 1996]

§ 1112.2 Decisions directing modified procedure.

A decision directing that modified procedure be used will set out the schedule for filing verified statements by all parties and will list the names and addresses of all persons who at that time are on the service list in the proceeding. In this part, a statement responding to an opening statement is referred to as a "reply", and a statement responding to a reply is referred to as a "rebuttal". Replies to rebuttal material are not permitted. The filing of motions or other pleadings will not